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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
) No. 3:05-cr-019-RRB
Plaintiff,)
)
v. >) **AFFIDAVIT OF**
 >) **KEVIN T. FITZGERALD**
CATHLEEN N. McLAUGHLIN,)
)
Defendant.)
)

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

KEVIN T. FITZGERALD, being first duly sworn,
deposes and states as follows:

1. I am counsel of record for the defendant in
the above-captioned action.

2. On December 2, 2005, this court entered
judgment against Ms. McLaughlin following the sentencing
occurring on November 30, 2005. Undersigned's office was

USA v. McLaughlin
No. 3:05-cr-019-RRB
Affidavit

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served with the judgment on December 7. At sentencing there arose an issue concerning restitution, for which this court set a restitution hearing for December 13, 2005. Unfortunately, undersigned counsel believed given the pending restitution issue the judgment would not be "final" until the restitution issue was resolved by the court.

2. On December 7, 2005, after having discussed the possibility of an appeal with Ms. McLaughlin, I had a discussion with AUSA Randall regarding the issue of restitution. I believed, based upon that conversation, that Mr. Randall agreed that Hughey v. United States, 495 U.S. 411, 110 S.Ct. 1979, 109 L.Ed.2d 408 (1990), precluded the government's restitution request. On December 12 when I received the government's restitution brief, I learned differently.

3. Thereafter, given the government's new position on restitution, and the possibility that that issue, too, would need to be appealed, Ms. McLaughlin decided to pursue an appeal.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

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/s/ Kevin T. Fitzgerald
KEVIN T. FITZGERALD

SUBSCRIBED AND SWORN to before me this 24th day of February, 2006.

/s/ Jennifer M. Jones
(Seal Affixed)

Notary Public for Alaska
My Commission Expires on
10/24/07

CERTIFICATE OF SERVICE

I hereby certify that on 2/24/06,
a copy of the foregoing Affidavit
was served electronically on:

Crandon Randell, Assistant U.S. Attorney

s/Kevin T. Fitzgerald

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